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10 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
11 **COUNTY OF ALAMEDA**

12 MARGARET FARRELL,
13 Plaintiff,
14
15 v.
16 JAMES TILTON,
Defendant.

Case No. RG 03079344

**PLAINTIFF'S AMENDED CASE
MANAGEMENT CONFERENCE
STATEMENT**

Date: October 26, 2007
Time: 1:30 p.m.
Place: Department 212
The Hon. Jon S. Tigar

Action Filed: January 16, 2003

19 At the Case Management Conference of August 6, 2007, the Court expressed
20 doubt "that the normal meet-and-confer process between the parties and whatever other
21 case management techniques have been employed until now are adequate to ensure
22 compliance with the consent decree" and affirmed its "independent ability and obligation
23 to make sure that the terms of [the Court's] own orders are complied with." (Reporter's
24 Partial Transcript of Proceedings, August 6, 2007 (RT), attached hereto as Exhibit A, at
25 10:20-26.) The Court ordered the parties to meet and confer regarding "what court
26 ordered relief, if any, would improve compliance with a consent decree by ameliorating
27

1 or eliminating the problems in the areas of hiring, contracts, and [policy] developments,
2 and information technology.” (RT, Exhibit A, at 10:28-11:4.) The parties were to
3 submit to the Court joint or separate statements regarding proposed remedies and the
4 necessity for an evidentiary hearing.

5 The parties met and conferred and were unable to agree on a joint proposal to
6 remedy to these chronic problems.¹ Plaintiff hereby submits her remedial proposal.

7 **I. Defendant’s Proposed Remedies are Inadequate to Address the Current**
8 **Crisis in DJJ**

9 The current crisis in DJJ stems not from its inability to adequately hire key staff,
10 enter into contracts, develop policies, or establish management information systems –
11 although ample evidence demonstrates that these tasks are indeed currently beyond DJJ’s
12 capabilities – but from DJJ’s utter inability to implement essential Court-ordered reforms.
13 Through its failure to implement core parts of the Court-ordered Remedial Plans, DJJ has
14 proven incapable of transforming itself from an institution that harms the youth in its
15 custody to one that rehabilitates them.

16 DJJ has failed to fully implement key reforms such as transforming punitive
17 restricted programming lock-up units into intensive treatment units, appropriately
18 separating youth classified as dangerous from those classified as vulnerable, ensuring
19 that youth attend school the legally required 240 minutes per day, developing and

21 ¹Defendant, in his Case Management Conference Statement, complains that plaintiff’s counsel
22 failed to provide a written response to the DJJ’s proposed remedies (Defendant’s Case Management
23 Conference Statement, October 19, 2007, at 2), despite the facts that the proposal was provided to
24 plaintiff’s counsel only two days in advance of the meet and confer and that defendant never requested a
25 written response. In any event, plaintiff’s counsel provided detailed concerns regarding defendant’s
26 proposal at the meet and confer, as a result of which defendant significantly altered the proposal to the
27 form now submitted to the Court. Defendant also complains that plaintiff’s counsel failed to propose
28 remedies at the meet and confer other than the hiring of additional staff or a receiver. (*Id.*) It is
unfortunate that the parties could not agree on a remedy, but this disagreement is hardly grounds for
criticism of opposing counsel or the implication that the meet and confer was not undertaken in good
faith.

1 implementing sexual behavior treatment programming, allowing youth who receive
2 punitive sentence-extending “time adds” to work them off through good behavior, and
3 reviewing whether time has been added to the sentences of mentally ill youth because of
4 behavior relating to their mental illness. (*See, e.g.*, Barry Krisberg, “DJJ Progress on the
5 Standards and Criteria of the Safety and Welfare Remedial Plan,” September 7, 2007
6 (Krisberg Report),² at 12 (DJJ classification system “does not meet nationally-accepted
7 professional standards”), 19-20 (punitive conditions in restricted units make treatment
8 impossible); California Division of Juvenile Justice Summary Education Program Report
9 for School Year 2006-07, Appendix D to Fourth Special Master’s Report, July 27, 2007
10 (Fourth Report), at 6 (“[s]tudent absentee rates continue to be unacceptable. All sites
11 received a rating of non-compliance in this area”); Joint Case Management Conference
12 Agenda, April 13, 2007, at Exh. A.) As a result, DJJ youth continue to suffer from
13 illegal conditions: restricted housing units remain “deplorable,” with “sanitation
14 conditions . . . below standards of decency,” dimly-lit, graffiti-covered cells, and
15 plumbing that works “intermittently or poorly.” (Krisberg Report at 19.) Youth are
16 locked in these “oppressive and punitive” units at least 20 hours each day, with only one
17 hour of school. (*Id.* at 20; *see also* California Division of Juvenile Justice Summary
18 Education Program Report for School Year 2006-07, Appendix D to Fourth Report, at 7,
19 8.) Outdoor recreation “is still limited to barren cage-like structures with virtually no
20 recreational equipment.” (Krisberg Report at 20.) Violence is still a serious problem at
21 some institutions, with high rates of assaults and group disturbances. (*Id.* at 24, 27.)

22 Why has DJJ been unable to implement the Remedial Plans, the blueprints for
23 reform? Why does the list of missed, Court-ordered deadlines amount to 11 single-
24 spaced pages? (Joint Case Management Conference Agenda, April 13, 2007, at Exh. A.)

26 ²The Krisberg Report will be filed shortly as an appendix to the Special Master’s Fifth Report.

1 The Special Master, the Court, plaintiff's counsel, and defendants themselves have
2 identified the areas of hiring, contracting, policy development, and information
3 technology as key barriers to DJJ's reform efforts. The Court's focus on these four areas
4 stems not from a desire to see DJJ develop an effective contracting process or an efficient
5 information technology system, but from the recognition that these functions are essential
6 to any real reform – they must work in order for the youth to be rehabilitated consistent
7 with state law and as required by the Consent Decree and Court-ordered Remedial Plans
8 in this case.

9 Defendant's Case Management Conference Statement³ (Def's CMC Statement)
10 misses this point and focuses solely on processes and bureaucratic reshuffling. It details
11 task forces, consultants, and committees, but provides no information as to when the
12 system will provide meaningful reform. Defendant labels as an accomplishment the
13 establishment of new working groups to determine what policies need to be rewritten in
14 order to provide youth with relief at an undetermined future date. (Def's CMC Statement
15 at 16.) This is a minor bureaucratic step, not an accomplishment. An accomplishment
16 would be to get youth in school or house them in humane conditions.

17 The central failure of defendant's remedial proposal is that it fails to provide any
18 concrete commitment to change the system and help the youth. A large bureaucracy such
19 as DJJ will always be able to describe how dozens of people are at work on processes
20 and meetings and task forces. But how are these particular processes and meetings and
21 task forces different from the ones the system has busied itself with during the three years
22 since the Consent Decree was entered, and the more than 15 months since the Safety and
23 Welfare Remedial Plan was finalized and DJJ began to miss its deadlines? The bottom
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25
26 ³Defendant's counsel provided plaintiff's counsel with a copy of Defendant's Case Management
27 Conference Statement on October 17, 2007, representing that it was final in substance and would only be
28 modified to correct minor errors. Plaintiff's citations are to that draft document.

1 line is that DJJ is failing to reform itself and failing the youth in its care. Their proposed
2 remedies fail to prevent that downward slide.

3 **A. Defendant's Implementation Failures Are Chronic and Severe**

4 DJJ's failures in the areas of hiring, contracting, policy development, and
5 information technology are deeply damaging and extremely long standing. These areas
6 all involve DJJ's ability to implement reform; without the ability to hire and contract with
7 appropriate staff and experts, to develop new policies, and to organize and manage
8 information, DJJ cannot undertake the massive sea change called for in the six Remedial
9 Plans in this case.

10 The division started at a severe disadvantage in these areas: according to the panel
11 of jointly-agreed-upon national planning experts, "DJJ needs significant help to create
12 the capacity for change." (Revised Safety & Welfare Plan, March 31, 2006, attached
13 hereto as Exhibit B, at 19.) The experts stated:

14 DJJ does not have a complete administrative team for the purposes of day-to-day
15 management, much less for implementation of major reform. In fact, at the time
16 this was written, DJJ did not have an official table of organization for its
17 headquarters operations. . . . Adding a new Deputy Secretary for DJJ from outside
18 the organization, and having the Secretary of the parent organization resign six
19 months later, does not make the task easier. While appointment of leadership from
20 outside the organization brings much needed national perspective, Deputy
21 Secretary Warner is handicapped by the loss of dedicated resources operating
22 within his chain of command and with the concomitant need to learn how to
23 obtain support from a newly created matrix management system.

24 (*Id.* at 23.) As defendant's present Case Management Conference Statement
25 demonstrates, the same problems continue to plague DJJ over 18 months later.

26 DJJ's failings in these four areas since that time have been well documented. As
27 the Special Master pointed out in her Third Report, covering the period of September to
28 November 2006,

[t]he slow and incomplete implementation of the observation and watch
policies and procedures [for suicidal youth] illustrates the need to build the
'capacity for change' as highlighted in the recently filed Safety and Welfare
Plan. The deficiencies in DJJ's management resources, policies and
procedures, training, management information systems and systems for

1 holding staff accountable all played a role in the failure yet to implement
2 fully the policies and procedures.
3 (Third Special Master's Report, December 7, 2006 (Third Report), at 12 (citations
4 omitted); *see also id.* at 2 ("it is critical that DJJ . . . fill key headquarters vacancies and . .
5 . . that the interface between DJJ and CDCR be improved to ensure that DJJ's needs are
6 met in the areas of contracting [and] information technology. . .") and 16 ("[t]he
7 difficulty in the interface between DJJ and CDCR staff that has interfered with necessary
8 medical contracts also has stalled progress on sexual behavior treatment curriculum
9 development and implementation. The critical work of DJJ's sexual behavior treatment
10 consultant has been stalled for at least six months by delays in payment and contract
11 renewal").)

12 When plaintiff has in the past pointed out DJJ's ongoing serious problems in these
13 areas, defendant has offered assurances and proposed fixes similar to those provided
14 today to the Court. On December 1, 2006, the parties took the following positions in
15 their Joint Case Management Conference Statement:

16 Plaintiff adds the following:

17 DJJ experiences widespread and chronic problems with recruitment
18 and hiring to fill key positions in the reform efforts. DJJ has demonstrated
19 an ongoing inability to enter into contracts with experts and organizations
20 to provide crucial services in a timely manner, due to Byzantine state
21 bureaucratic procedures. Because sweeping change is not possible without
22 sufficient -- and sufficiently skilled and experienced -- staff, these problems
23 threaten the implementation of the Court-ordered reforms in this case.
24 DJJ's pay disparities with community standards and its bureaucratic barriers
25 to contracting must be addressed and plaintiff believes these problems will
26 require Court intervention.

27 Defendant's response:

28 DJJ has taken affirmative steps to address the Plaintiff's concerns
regarding recruitment, hiring and contracting issues that it anticipates will
greatly improve efficiency in these areas. DJJ remains in contact with
Plaintiff's counsel regarding implementation of these steps. Indeed, the
Plaintiff's counsel met with CDCR Secretary James Tilton and all interested
parties on Friday October 20, 2006, to discuss an intensive plan to
streamline the above issues. An additional meeting is scheduled for
December 5, 2006, to discuss ongoing concerns surrounding these issues.
For the forgoing reasons, the Defendant disagrees that any court action is
warranted at this time.

(Joint Case Management Conference Statement, December 1, 2006, at 2-3; *see also* Fourth Special Master's Report, July 27, 2007 (Fourth Report), at 5 and n.12.)

Four months later, in the Joint Case Management Conference Agenda of April 13, 2007, defendant acknowledged that “ it has had difficulty in establishing, recruiting, and filling positions, as well as retaining staff” but stated that “DJJ is working hard to overcome all of these barriers.” (*Id.* at 8.) The serious concerns presently raised by the Court, the Special Master, and the experts, all demonstrate that DJJ's confidence that it can solve these chronic problems is misplaced and that the intervention of CDCR administrators at the highest level has been attempted and has failed.

1. Contracts

Defendant's chronic inability to enter into contracts for urgent, essential services extends to every area of Court-ordered reform: all of the subject matter experts in the case agree that “DJJ's difficulties in consummating contracts and paying contractors goes beyond anything that can be reasonably explained or justified. Rather, DJJ's contracting problems are symptomatic of organizational dysfunction that will impede operations until it is successfully addressed.” (Fourth Report at 6 (citation omitted).) DJJ itself admits that the “length of time it takes to process contracts will continue to jeopardize certain deadlines.” (Fourth Report at 5, quoting DJJ Quarterly Report, April 2007, Safety & Welfare Section, at 3.) The resulting delays mean that youth have been denied access to appropriate sexual behavior treatment, medical care, and other essential services, as the reports from the Medical, Sexual Behavior Treatment, and Safety & Welfare Experts shortly to be filed by the Special Master demonstrate.

The DJJ has even failed to follow this Court's order that it contract with national expert Chris Murray “to develop a master plan for DJJ's remedial efforts.” (Order to Hire Chris Murray & Associates, August 6, 2007, at 2.) Mr. Murray continues under contract with DJJ in other areas, but DJJ Chief Deputy Secretary Bernard Warner

informed plaintiff's counsel on September 11, 2007, that neither party could discuss the master planning project with him, as that might have a negative impact on the state contracting process. Nearly three months after this Court's order, the contract has not been completed.

2. Hiring

DJJ has long been plagued by vacancies in key reform positions. For example, the organizational charts filed by defendant on October 16, 2007, demonstrate the lack of capacity at headquarters: in the Administration and Operations chart, only five of the 15 boxes have names; the others are marked “vacant” or have no names filled in.

According to the Safety and Welfare Expert, “[d]elays in creating the needed management resources and structure have delayed many aspects of the S&W Remedial Plan and have had cascading negative impacts on other downstream goals of the Plan” (Krisberg Report at 3.) DJJ has never had a Director of Juvenile Programs, a “key leadership and management position. . . with responsibility for all treatment and rehabilitation programs.” (Fourth Report at 2.) As the Special Master and the Medical Experts’ Reports⁴ point out, significant vacancy rates in mental health treatment and in medical support services have severely hampered DJJ’s ability to provide legally adequate care, much less the Court-ordered reforms. (Third Report at 12 and Appendix D; Fourth Report at 18-20.)

3. Policy Development

DJJ’s chronic inability to get policies written and finalized serves as a bottleneck to prevent reform. According to the Safety & Welfare Expert, “there will be few sustained changes in the confinement conditions for the DJJ youth until new reform policies are in place.” (Krisberg Report at 17.) The Special Master reports that “DJJ has

⁴First Report of Consent Decree by the Medical Experts, September 13, 2007, to be filed shortly as an exhibit to the Special Master's Fifth Report.

1 not. . . completed the first policies required by the Consent Decree, the Mental Health
2 Remedial Plan and the Safety and Welfare Remedial Plan.” (Fourth Report at 10-11
3 (citation omitted).) The Sexual Behavior Treatment Expert’s Report, shortly to be filed
4 with the Court by the Special Master, also details how DJJ’s inability to write clear and
5 uniform policies has frozen reform in this area.

6 **4. Information technology**

7 According to the Special Master, “DJJ’s progress towards compliance with the
8 Consent Decree and the remedial plans also has been hampered by insufficient
9 information technology support. . .” (Fourth Report at 7.) Information technology was a
10 key part of the national planning experts’ proposals for DJJ’s reforms: “establishment of
11 comprehensive management information systems is the key component that creates the
12 capacity” for core functions such as “implementation and management of reform.”
13 (Safety & Welfare Planning Team, “Safety and Welfare Plan: Implementing Reform in
14 California,” March 31, 2006, at 21, 29.) The central failure in this area is the WIN
15 Exchange, a system-wide database of basic, essential information regarding the youth in
16 DJJ’s care. The “WIN system is central to the implementation of many DJJ revised
17 policies in the areas of restricted housing, DDMS, the classification system, religious
18 services, and the grievance system. WIN Exchange is the only automated system that
19 Headquarters and some of the institutions can utilize to efficiently monitor compliance
20 with many promised S&W Remedial Plan goals.” (Krisberg Report at 8.) DJJ simply
21 cannot reform itself without adequate information technology, but it continues to be “an
22 agency which is mostly driven by anecdotes and subjective impressions, with limited
23 capacity to implement data-driven planning and management.” (*Id.* at 10.)

24 **B. Defendant’s Proposed Remedies Will Fail**

25 A review of each of defendant’s proposed remedies demonstrates no concrete
26 assurances that these intractable problems can be resolved to bring about real reform.

1 **1. Headquarters Capacity**

2 Defendant states, in the section entitled “Organizational Enhancements and
3 Changes,” that DJJ will generally improve in each of the four problem areas due to (a) a
4 new business unit (BIS) in the CDCR, (b) a new Operational Support Unit tasked with
5 improving DJJ’s performance and liaising with CDCR in these areas, (c) a new staff
6 member to oversee the OSU, the policy unit, and a new compliance unit, (d) a new
7 Farrell Project Manager, and (e) a restructured approach to implementation in the areas
8 of intake, assessment, and classification; programs; and community re-entry. (Def’s
9 CMC Statement at 3-5.) These proposals provide no concrete assurances that DJJ will be
10 able to reverse course from a failing system to a successful one for several reasons. First,
11 the CDCR business unit (BIS) is entirely outside of DJJ’s control. CDCR has a long and
12 dismal record in the areas of hiring, contracting, policy development, and information
13 technology – in fact, the agency is so incompetent in these areas that a federal judge
14 appointed a Receiver to take over those functions (among others) with regards to medical
15 care. (Findings of Fact and Conclusions of Law Re Appointment of Receiver, *Plata v.*
16 *Schwarzenegger*, No. C01-1351 THE (*Plata Findings of Fact*), attached hereto as
17 Exhibit C, at 6, 7-8, 14-17, 26-29, 31-32, 39.) Closer involvement with CDCR in these
18 problem areas can provide no confidence in appropriate and speedy solutions. Further,
19 the system will not be implemented for at least another year. (Def’s CMC Statement at
20 7.)

21 Second, defendant announces the establishment of an Operational Support Unit
22 and a restructured approach with regards to intake, assessment, classification, programs,
23 and community re-entry, but provides no details that can give the Court any confidence
24 that these “new approaches” will perform any differently from business as usual in DJJ.
25 How many staff members will be in the OSU and on these new teams? How will DJJ
26 attract new and qualified staff to these jobs, given its terrible record of filling vacancies
27

1 for *Farrell*-specific positions? (See Sections I.A.2, *supra*, and I.B.3, *infra*.) What new
2 powers will they have that staff have not had in the past? How will they break out of the
3 long-standing pattern of failure in these areas? How will providing a multi-disciplinary
4 approach to intake, assessment, classification, programs, and community reentry help
5 make hiring, contracts, policy development, and IT use more efficient?

6 Third, while it is helpful to hire a Farrell Project Manager and a Director of
7 Administration and Operations, two new staff members cannot turn around the ingrained,
8 long-standing institutional failures described in the Special Master's reports.

9 Fourth, the new Farrell Project Manager and the new compliance unit included in
10 defendant's remedies are simply the much-delayed implementation of long-overdue
11 Court orders already in place. (Safety & Welfare Remedial Plan, July 10, 2006, at 20
12 (Farrell Project Director to be hired by October 1, 2006), 20-21 (compliance team to be
13 hired by October 1, 2006).) Defendant cannot claim as a bold new step the extremely
14 tardy implementation of a Court-ordered remedy. According to defendant, "DJJ now
15 has, for the first time, an organized and cohesive structure to enable it to approach
16 *Farrell* implementation from a multi-disciplinary perspective." (Def's CMC Statement at
17 5.) Even if this were true, defendant offers nothing to show that this new multi-
18 disciplinary approach will put compliance within reach in any reasonable or even
19 ascertainable time.

20 2. Contracts

21 The primary reason DJJ gives for its chronic, severe failures regarding contracts is
22 "growing pains" from the nearly two-and-a-half-year-old reorganization of CDCR.
23 (Def's CMC Statement at 5.) DJJ argues that matters will improve since CDCR staff are
24 holding more meetings with DJJ. (*Id.* at 6-7.) More CDCR staff were assigned to DJJ
25 contract matters one year ago (*id.* at 6), but no explanation is given as to why significant
26 improvements have not resulted. DJJ has not yet even determined if those additional
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1 staff are adequate, although defendant makes a vague commitment to “conduct a
2 workload review to determine if additional staff are required” at some undisclosed point
3 in the future. (*Id.* at 6.) Further, as the Special Master points out, “previous DJJ CDCR
4 attempts to address the issue together have petered out without success.” (Fourth Report
5 at 6 (citation omitted).)

6 DJJ’s additional remedies in this area include the retention of a consultant to study
7 the problem as it relates to health care contracts and complete the review in April 2008;
8 training sessions for DJJ staff in contract issues; allowing the DJJ Contract Manager
9 access to CDCR’s tracking database; and increased use of boilerplate language for
10 contracts. (Def’s CMC Statement at 6.) These steps are not nearly enough to resolve
11 such intractable problems. No explanation is given as to why they were not undertaken a
12 year ago, when the dimensions of this problem were already apparent. (*See* Joint Case
13 Management Conference Statement, December 1, 2006, at 2-3.)

14 According to DJJ, the CDCR business system, BIS, “will be an incredible tool” to
15 improve contract processing, but as noted above at I.B.1, this CDCR function is out of
16 DJJ’s control and in the hands of an entity with a track record of dismal failure in this
17 area. Further, it will not be implemented for at least another year. (Def’s CMC
18 Statement at 7.)

19 **3. Hiring**

20 DJJ has identified numerous significant barriers to hiring, particularly the
21 “inadequate and inaccurate reporting of vacancy information.” (*Id.* at 9.) To address this
22 obstacle, DJJ has only in the last few weeks established a process that a well-run system
23 would have had in place from the beginning: a regular reporting mechanism to inform
24 DJJ management of where the vacancies are and how long the positions have been open.
25 (*Id.* at 9-10.) Similarly, DJJ has only now, after pressure from plaintiff, the Special
26 Master, and the Court, identified equipment and training failures that have held up

1 background checks on new employees and resulted in the loss of many potential staff.
2 (*Id.* at 10-11.) These steps, along with the job fairs, recruitment activities, and pay raises
3 for medical and mental health clinicians resulting from lawsuits in the adult system
4 described in defendant's papers, may track the scope of the problem and provide some
5 limited fixes around the margins, but are not adequate to provide any assurances to the
6 Court that the chronic, severe hiring problems will be solved.

7 The problem with hiring is not so much the absolute number of empty positions –
8 although the 14% vacancy rate at the Northern California complex and at the Ventura
9 Youth Correctional Facility and the 39% vacancy rate at headquarters described in
10 Defendant's CMC Statement at 11-12 are certainly alarming – as the distribution of those
11 vacancies. The vacancy rate among "Remedial Plan positions," those jobs specifically
12 established in order to carry out the *Farrell* Court-ordered reforms, is a particular
13 concern. Six months ago, only 17% of these positions were filled. (Joint Case
14 Management Conference Agenda, April 13, 2007, at 7 & Exh. C.) Defendant provides
15 no information as to whether these key positions continue to be mostly vacant.
16 Headquarters has lacked a Director of Programs since the position was established more
17 than a year ago, and has lacked a *Farrell* Project Director nearly as long. (Fourth Report
18 at 2-3.)

19 Defendant does not provide a sufficiently specific description of the scope of the
20 problem and his proposed remedies do not explain how such a persistent, severe concern
21 will be addressed.

22 **4. Policy**

23 Defendant does not even know how many policies remain to be developed. (*See*
24 Def's CMC Statement at 15 ("DJJ estimates over eight hundred policies remain to be
25 developed").) The DJJ has only recently started the process of "identify[ing] every
26 *Farrell* policy that . . . needs to be developed and then prioritiz[ing] the order in which
27

1 those policies will be developed.” (*Id.* at 16.) The scope of the problem is vast indeed,
2 with overdue policy overhauls ranging from suicide watch procedures to the oppressively
3 punitive disciplinary system and touching on nearly every aspect of life in the DJJ.

4 The proposed remedies are utterly inadequate: “realigning staffing and
5 streamlining processes” (*id.* at 18) is vague, and “evaluating the policy process and
6 identifying ways to streamline it” (*id.*) only points out the fact that DJJ, despite many
7 months of intense pressure from the Special Master and plaintiff’s counsel, has not yet
8 completed this preliminary step. (It is also not clear how DJJ can streamline policy
9 processes when it has not yet completed the task of identifying ways to streamline
10 processes.) Improving tracking, shortening deadlines, and allowing staff with expertise
11 in the subject matter to write policy, instead of leaving it in the hands of policy staff, are
12 hardly complete solutions to the extraordinary crisis of backlogged policies.⁵

13 Sadly, the promises DJJ provides in its current filing have already been made and
14 broken. Over a year and a half ago, DJJ proclaimed that it was “in the process of
15 identifying the complete workload related to policy development and revision” and
16 developing a master list and schedule for Safety & Welfare Remedial Plan policies.
17 (Fourth Report at 11, quoting DJJ Quarterly Report, April 2007, Safety & Welfare
18 Matrix Tracking Document, at 1.) This process has clearly failed, and DJJ’s promises to
19 do the same all over again cannot be trusted.

20 ///

21 _____
22 ⁵The DJJ’s helplessness to solve this problem on its own is also illustrated in its
23 fundamental mis-statement regarding one of the barriers to efficient policy development.
24 According to defendant, essential policies must “be reviewed by CDCR’s Labor Office
25 for labor impact, and if any labor issues exist labor negotiations will ensue. If labor
26 issues exist, that process could take up to ninety days.” (Def’s CMC Statement at 17.)
27 That is simply not true: labor negotiations should cause delays of no more than 30 days at
28 the most. (*See* letter from Ronald Yank to Judge Claudia Wilken, October 17, 2007,
attached hereto as Exhibit D.)

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The only solution DJJ provides to avoid future such significant failures is to engage in further meetings with CDCR. That is inadequate, particularly given CDCR's well-documented failures in this area. (*Plata* Findings of Fact, Exhibit C, at 6.) Further, DJJ fails to address the fact that it proved incapable of even establishing the parameters of a dashboard system to track its implementation of agreed-upon core remedies, and the fact that it took many months for DJJ to gather fundamental information regarding vacant positions at the eight institutions. (Fourth Report at 9-10.) The division lacks even the basic infrastructure to gather and organize information necessary to track reform progress. Court intervention is needed to establish these basic functions within DJJ.

Because defendant has demonstrated a long-standing, severe, and damaging inability to comply with Court orders in the areas of hiring key staff, entering into contracts to bring necessary expertise to bear on DJJ's serious deficits, developing new policies to implement reforms, and developing information technology capable of supporting reforms, the Court must take matters into its own hands. A receiver is the appropriate remedy to cut through the layers of bureaucratic ineptitude and incapacity

1 that have marked DJJ's attempts to comply with the numerous Court orders in this case
2 to date.

3 **A. The Court Has the Power to Appoint a Receiver to Carry the**
4 **Judgment in the Case Into Effect**

5 California judges have broad discretion to appoint receivers. Indeed, California
6 law allows for the appointment of receivers in all cases "where necessary to preserve the
7 property or rights of any party." (Code of Civ. Pro. § 564(b)(9).) The court has the
8 power to appoint a receiver even where neither party has requested it. (*Venza v. Venza*,
9 94 Cal. App. 2d 878, 883-884 (1949); *Neider v. Dardi*, 130 Cal. App. 2d 646, 651
10 (1955).) Specifically, a receiver may be appointed "after judgment, to carry the judgment
11 into effect." (Code of Civ. Pro. § 564(b)(3).)

12 This broad discretion is reflected in the extent to which orders to appoint receivers
13 have been upheld on appeal. An order appointing a receiver will not be disturbed on
14 appeal unless abuse of discretion is shown. (*City and County of San Francisco v. Daley*,
15 16 Cal. App. 4th 734, 744 (1993).) An order appointing a receiver will not be reversed
16 where "reasonable minds may differ on the necessity for the receivership." (55 Cal. Jur.
17 3d., Receivers §6.)

18 The authority to appoint receivers is not completely unlimited. The Court must
19 consider the "availability and efficacy of other remedies in determining whether to
20 employ the extraordinary remedy of a receivership." (*City and County of San Francisco*
21 *v. Daley*, 16 Cal.App.4th 734, 745.) But the availability of other remedies does not, in
22 and of itself, preclude the use of receivership. (*Id.*)

23 In the present case, the Court has already ordered other remedies – notably, six
24 carefully negotiated remedial plans, most with detailed implementation plans and
25 schedules. The plans went into effect on March 1, 2005 (Education), May 13, 2005
26 (Sexual Behavior Treatment), May 31, 2005 (Disabilities), February 24, 2006 (Medical),
27 July 10, 2006 (Safety and Welfare), and August 25, 2006 (Mental Health). As of six

1 months ago, defendant had already missed hundreds of deadlines contained within the
2 plans. (Joint Case Management Conference Agenda, April 13, 2007, at 5-6 and
3 Appendix B.) As Section I.A., *supra*, describes, the reports of the Special Master and the
4 various experts in the case make it clear that the situation is worsening and that
5 defendant's failures relate not just to the specific Court-ordered reforms, but to
6 defendant's very capacity to put any such substantive reforms into place.

7 **B. Absent Court Intervention, DJJ Cannot Comply with the Court-**
8 **Ordered Remedies to Reform Itself**

9 For all of the above reasons, the Court should appoint a receiver to direct
10 defendant's compliance in the four areas under consideration: hiring, contracts, policy
11 development, and information technology. The Court should set an evidentiary hearing
12 for these purposes and a briefing schedule to ensure that the Court has the full
13 information needed to render a decision in this important matter.

14 Dated: October 23, 2007

Respectfully submitted,

15 PRISON LAW OFFICE

16
17 By

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